

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: MICHAEL R. EILER,
BEVERLY J. EILER,

BKY. No.: 04-34514
Chapter 7

Debtors.

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: MICHAEL R. EILER, BEVERLY J. EILER AND THEIR ATTORNEY,
RICHARD J. PEARSON, PRESCOTT & PEARSON, P.O. BOX 120088,
NEW BRIGHTON, MN 55112.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 1, 2004 at 9:30 A.M. in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than August 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than August 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 3, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default for a partial payment for the month of June, 2004 and full payments of \$1,062.17 per month from July 1, 2004 to date, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$152,000.00. According to the Rice County Tax Records the fair market value of the property is estimated at \$173,900.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to

Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 9, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The St. Paul Building
6 W. Fifth Street
Seventh Floor
St. Paul, MN 55102-1420
(651) 297-6400
Attorney Reg. 152262/231605
(D1672)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 9, 2004.

WELLS FARGO BANK, N.A.

By: Karan Abernethy
Karan Abernethy

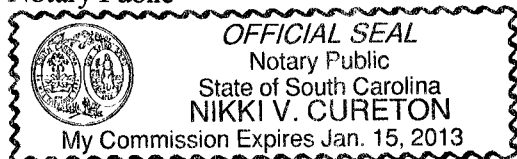
Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

9th day of August, 2004.

Nikki V. Cureton

Notary Public



Title
Recording

528359

Document No.
528359

OFFICE OF COUNTY RECORDER
RICE COUNTY, MINN

No. of Pages 16

Date 10-23-03 Receipt # 2444
Mortgage Registration Tax Paid of \$ 342.12
Fran Windschitt, Rice County Auditor/Treasurer
Deputy



I hereby certify that the within instrument was filed in this office
for record on 10-23-2003 at 12:40 ☐ AM ☒ PM

10232003



Marsha DeGroot, County Recorder

W. Smith
Deputy

[Space Above This Line For Recording Data]

MORTGAGE

Title Recording Services, Inc. 397140
1043 Grand Avenue #250
St. Paul, MN 55105 541374
RICE U FIDELITY NATL WALK
MTG

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated AUGUST 31, 2003 together with all Riders to this document.

(B) "Borrower" is MICHAEL R EILER AND BEVERLY J EILER, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION

organized and existing under the laws of THE STATE OF CALIFORNIA

Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated AUGUST 31, 2003

The Note states that Borrower owes Lender ONE HUNDRED FORTY EIGHT THOUSAND SEVEN HUNDRED FORTY EIGHT AND 00/100

Dollars

(U.S. \$****148,748.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 01, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following

(X)

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:


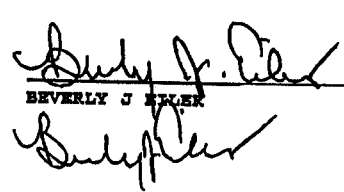
_____	 MICHAEL R. EILER _____ (Seal) -Borrower
_____	 BEVERLY J. EILER _____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

Exhibit "A"

Loan Number :

Borrower : MICHAEL R EILER And BEVERLY J
EILER

REAL PROPERTY IN RICE COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS:
LOT 1, IN BLOCK 1, IN "PRAIRIE RIDGE FIRST
ADDITION," IN THE CITY OF FARIBAULT, RICE
COUNTY, MINNESOTA.

APN: 18-8299-000

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Debtors.

**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SUPERVISOR**

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default for a partial payment for the month of June, 2004 and full payments of \$1,062.17 per month from July 1, 2004 to date, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$152,000.00. According to the Rice County Tax Records the fair market value of the property is estimated at \$173,900.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

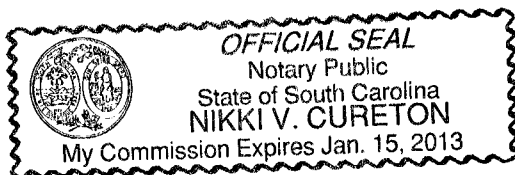
Dated: August 9, 2004

By: Karan Abernethy
Karan Abernethy
Bankruptcy Supervisor
3476 Stateview Blvd.
Fort Mill, SC 29715

Subscribed to and sworn before me this

9th day of August, 2004.

Nikki V. Cureton
Notary



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**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtors filed their petition herein on August 3, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Rice County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 1, in Block 1, in "Prairie Ridge First Addition", in the City of Faribault.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$152,000.00. According to the Rice County Tax Records the fair market value of the property is estimated at \$173,900.00. The payments due under said mortgage are in default for a partial payment for the month of June, 2004 and full payments of \$1,062.17 per month from July 1, 2004 to date, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movant's loan totals approximately \$152,000.00 and the fair market value of the property is estimated at \$173,900.00. Any purported equity in said real property would be consumed by per diem interest and marketing costs.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 9, 2004

By: /e/ Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Saint Paul Building
6 W. Fifth Street
Seventh Floor
St. Paul, MN 55102-1420
(651) 297-6400
Attorney Reg. 152262/231605
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 11, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Mary Jo A. Jensen-Carter
Trustee
1339 E. Cnty. Rd. D
Vadnais Heights, MN 55109

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Michael R. Eiler
Beverly J. Eiler
1209 17th St. SW
Faribault, MN 55021

Richard J. Pearson
Prescott & Pearson
P.O. Box 120088
New Brighton, MN 55112

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 11, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

6 W. Fifth Street

Seventh Floor

St. Paul, MN 55102-1420

(651) 297-6400

Attorney Reg. 152262

(D1672)

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ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 1, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 1, in Block 1, in "Prairie Ridge First Addition," in the city of Faribault, Rice County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Dennis D. O'Brien
Judge of the U.S. Bankruptcy Court